

REMARKS

Claims 52-77 are pending in the present application. In the Final Office Action mailed June 21, 2004, claims 55-57, 60 and 61 were withdrawn from consideration as being directed to a non-elected invention. Claims 54 and 58 were rejected. Claims 52, 53, 65-73, 76 and 77 were allowed, and claims 59, 62-64, 74 and 75 were objected to as depending from a rejected base claim, but were indicated to be allowable if rewritten in independent form incorporating the limitations of the base claim and any intervening claims. In this response, claims 54, 61 and 62 have been amended and claim 60 has been cancelled. Reconsideration of the present application as amended and including claims 52-59 and 61-77 is respectfully solicited.

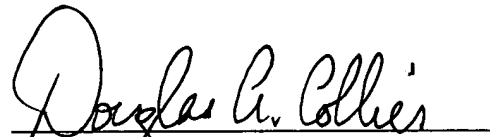
Claim 54 was rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,123,926 to Pisharodi in view of U.S. Patent No. 6,127,597 to Beyar et al. Amended claim 54 recites “accessing the disc space; inserting a sleeve adjacent the disc space, the sleeve having a working channel extending between a proximal end and a distal end; preparing an implant insertion location in the disc space through the sleeve; providing an implant having an upper shell, a lower shell, and a spacer between the upper shell and the lower shell; inserting the implant through the working channel of the sleeve to the implant insertion location in the disc space; and hydrating the spacer between the upper and lower shell to expand the implant in the disc space so that the upper shell and the lower shell rigidly engage adjacent vertebral endplates.” There is no disclosure or suggestion in Pisharodi or Beyar et al. of this combination of features. Accordingly, claim 54 is allowable and withdrawal of the rejection of the same is respectfully

requested.

Claim 58 depends from claim 54 and is allowable at least because claim 54 is allowable and also because Pisharodi, Beyar et al, and U.S. Patent No. 6,171,339 to Houfburg, assuming arguendo that the referneces were combinable, do not disclose or suggest the combination of features included in claim 58. Claim 60 has been cancelled, and claim 61 has been amended to depend from claim 54 in view of the cancellation of claim 60. Claim 61 has been amended to maintain consistency with amended claim 54.

The proposed amendments do not present new matter or new issues for consideration by the Examiner. Accordingly, entry of the amendment is believed proper. In view of the foregoing amendments and remarks, claims 52-59 and 61-77 are in condition for allowance. A Notice of Allowance for the present application is hereby solicited. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with regard to the present application.

Respectfully submitted:



Douglas A. Collier

Reg. No. 43,556

Woodard, Emhardt, Moriarty

McNett & Henry LLP

Bank One Center Tower

111 Monument Circle, Suite 3700

Indianapolis, Indiana 46204-5137

(317) 634-3456